

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN AMOS ATKINSON,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 15-CV-0057-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 12, 13). Plaintiff is represented by Lora Lee Stover. Defendant is represented by Thomas M. Elsberry. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.*, at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
13 “of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C.
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s
20 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in

1 “substantial gainful activity,” the Commissioner must find that the claimant is not
2 disabled. 20 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
6 “any impairment or combination of impairments which significantly limits [his or
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
9 this severity threshold, however, the Commissioner must find that the claimant is
10 not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to
12 several impairments recognized by the Commissioner to be so severe as to
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
14 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity
18 of the enumerated impairments, the Commissioner must pause to assess the
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R.
2 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's
4 RFC, the claimant is capable of performing work that he or she has performed in
5 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
6 capable of performing past relevant work, the Commissioner must find that the
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's
10 RFC, the claimant is capable of performing other work in the national economy.
11 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
12 must also consider vocational factors such as the claimant's age, education and
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.
15 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
16 analysis concludes with a finding that the claimant is disabled and is therefore
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such
2 work “exists in significant numbers in the national economy.” 20 C.F.R.
3 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 Plaintiff applied for supplemental security income (SSI) benefits on May 9,
6 2012, alleging an onset date of April 1, 2000.¹ Tr. 147–53. His claim was denied
7 initially and on reconsideration. Tr. 90–93, 95–96. Plaintiff appeared at a hearing
8 before an administrative law judge on March 7, 2014. Tr. 41–66. The ALJ issued
9 a decision on April 14, 2014, finding that Plaintiff was not disabled under the Act.
10 Tr. 23-37.

11 At step one, the ALJ found that Plaintiff had not engaged in substantial
12 gainful activity since May 9, 2012, the application date. Tr. 25. At step two, the
13 ALJ found that Plaintiff had severe impairments, but at step three the ALJ found
14 that Plaintiff did not have an impairment or combination of impairments that met
15 or equaled the listing of impairment. Tr. 29. The ALJ determined Plaintiff had the
16 RFC to

17
18 ¹Regardless, Plaintiff is not eligible for SSI disability benefits for any month prior
19 to the month following the month he protectively filed his SSI disability benefits
20 application. 20 C.F.R. §§ 416.330, 416.335.

1 “perform a full range of work at all exertional levels but with the following
2 nonexertional limitations: the claimant has the ability to remember locations
3 and work-like procedures; understand and remember very short and simple
4 instructions; carryout very short and simple instructions; perform activities
5 within a schedule, maintain regular attendance, and be punctual within
6 customary tolerances; sustain an ordinary routine without special
7 supervision; work in coordination with or proximity to others without being
8 distracted by them; make simple work related decisions; complete a normal
9 workday and workweek without interruptions from psychologically based
symptoms and to perform at a consistent pace without an unreasonable
number and length of rest periods; ask simple questions or request
assistance; accept instructions and respond appropriately to criticism from
supervisors; get along with coworkers or peers without distracting them or
exhibiting behavioral extremes; maintain socially appropriate behavior and
adhere to basic standards of neatness and cleanliness. The claimant must
have no contact with the general public, and in particular, no contact with
children.”

10 Tr. 31–32. At step four, the ALJ found that Plaintiff had no past relevant work.

11 Tr. 36. At step five the ALJ found Plaintiff could perform jobs that exist in
12 significant numbers in the national economy in the representative occupations such
13 as assembly occupations, packing and filling machine operator occupations, hand
14 packer and packager occupations, at each exertional level; sedentary, light and
15 medium, according to the vocational expert’s testimony. Tr. 36–37. Since the ALJ
16 found that, considering Plaintiff’s age, education, work experience, and RFC, the
17 Plaintiff was capable of making a successful adjustment to work that exists in
18 significant numbers in the national economy, a finding of not disabled was made.

19 Tr. 37
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1 On April 29, 2014, Plaintiff requested review by the Appeals Council, Tr.
2 14–15, and submitted a letter brief in support of his argument, Tr. 216–19, along
3 with additional medical records, Tr. 397–418. On February 8, 2015, the Appeals
4 Council denied Plaintiff’s request for review, Tr. 1–6, making the ALJ’s decision
5 the Commissioner’s final decision that is subject to judicial review. 42 U.S.C. §§
6 405(g), 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

7 ISSUES

8 Plaintiff seeks judicial review of the Commissioner’s final decision denying
9 him supplemental security income under Title XVI of the Social Security Act.

10 Plaintiff has framed two issues for review:

- 11 1. Whether the ALJ erred in assessing the Plaintiff’s residual functional
12 capacities; and
- 13 2. Whether the ALJ failed to pose a proper hypothetical to the vocational
14 expert.

15 ECF No. 12 at 8.

16 DISCUSSION

17 A. Opinion of Mahlon Dalley, Ph.D.

18 “Plaintiff contends that the ALJ’s decision does not properly reject Dr.
19 Dalley’s opinion as to the Plaintiff’s residual functional capacities as related to
20

1 Plaintiff's psychological impairments, as no clear and convincing rational was
2 given for the rejection." ECF No. 12 at 11.

3 A treating physician's opinions are entitled to substantial weight in social
4 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
5 (9th Cir. 2009). If a treating or examining physician's opinion is uncontradicted,
6 an ALJ may reject it only by offering "clear and convincing reasons that are
7 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th
8 Cir. 2005). "However, the ALJ need not accept the opinion of any physician,
9 including a treating physician, if that opinion is brief, conclusory and inadequately
10 supported by clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation
11 omitted). "If a treating or examining doctor's opinion is contradicted by another
12 doctor's opinion, an ALJ may only reject it by providing specific and legitimate
13 reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d
14 at 1216 (*citing Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir. 1995)).

15 On December 7, 2012, Dr. Dalley conducted a DSHS psychological
16 examination of Plaintiff. Tr. 289-94. Dr. Dalley opined Plaintiff would have
17 marked limitations in performing activities within a schedule, maintaining regular
18 attendance, being punctual within customary tolerances without special supervision
19 and maintaining appropriate behavior in a work setting and severe limitations in
20 communicating and performing effectively in a work setting and completing a

1 normal workday and workweek without interruptions from psychologically based
2 symptoms. Tr. 291.

3 The ALJ rejected Dr. Dalley's opinions of marked and severe limitations
4 because they were unsupported by the objective medical findings, are inconsistent
5 with Dr. Dalley's mental status examination of Plaintiff, and inconsistent with the
6 treatment records and opinions of Dr. Henry and Dr. Veraldi. Tr. 35.

7 Because Dr. Dalley's opinion was contradicted by the opinions of Drs.
8 Henry and Veraldi, the ALJ was only required to provide specific and legitimate
9 reasons supported by substantial evidence in the record before discounting Dr.
10 Dalley's opinion. The ALJ did so in this case. Tr. 35.

11 First, the ALJ observed that "Dr. Dalley's own examination of the claimant
12 revealed no evidence to show the claimant would have difficulty communicating
13 and performing effectively in a work setting—the claimant had a normal
14 appearance, speech, attitude and behavior, mood, thought process and thought
15 content, orientation, perception and memory. Dr. Dalley's own examination also
16 failed to reveal any evidence of significant psychological symptoms that would
17 cause "severe" impairments on the claimant's ability to complete a normal workday
18 and workweek." Tr. 35. These findings are supported by substantial evidence in
19 the record.

1 Next, the ALJ discounted Dr. Dalley's opinion because it was wholly
2 inconsistent with the treatment records and opinions of Drs. Henry and Veraldi. Tr.
3 35 (citing to Tr. 232–49, 251–64, 298–396). The ALJ extensively discussed and
4 accepted the opinions of Dr. Henry (consultative examiner) and Dr. Veraldi
5 (medical expert). Tr. 33–35. Plaintiff does not challenge these opinions which
6 support the ALJ's RFC finding. Plaintiff challenges certain concerns—as opposed
7 to opinions—expressed by these doctors. ECF No. 12 at 13. However, “[w]here
8 medical reports are inconclusive, ‘questions of credibility and resolution of
9 conflicts in the testimony are functions solely of the Secretary.’” *Morgan v.*
10 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999) (citation omitted).
11 No error has been shown.

12 **B. Hypothetical Question Posed to Vocational Expert**

13 Plaintiff faults the ALJ for posing an incomplete hypothetical to the
14 vocational expert. ECF No. 12 at 14. Specifically, Plaintiff contends the
15 hypothetical question did not accurately portray Plaintiff's limitations from his
16 psychological impairments. *Id.*

17 “An ALJ must propound a hypothetical to a [vocational expert] that is based
18 on medical assumptions supported by substantial evidence in the record that
19 reflects *all* the claimant's limitations.” *Osenbrock v. Apfel*, 240 F.3d 1157, 1165
20 (9th Cir. 2001) (emphasis added). “If the assumptions in the hypothetical are not

1 supported by the record, the opinion of the vocational expert that claimant has a
2 residual working capacity has no evidentiary value.” *Gallant v. Heckler*, 753 F.2d
3 1450, 1456 (9th Cir. 1984). “It is, however, proper for an ALJ to limit a
4 hypothetical to those impairments that are supported by substantial evidence in the
5 record.” *Osenbrock*, 240 F.3d at 1165.

6 Because the ALJ included the full extent of credible limitations supported by
7 the record in the hypothetical, this Court does not find error.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 1. Plaintiff’s Motion for Summary Judgment (ECF No. 12) is **DENIED**.

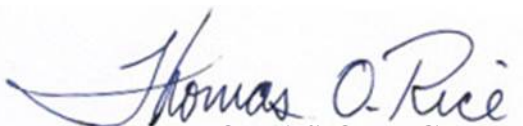
10 2. Defendant’s Motion for Summary Judgment (ECF No. 13) is

11 **GRANTED.**

12 The District Court Executive is hereby directed to file this Order, enter
13 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

14 **DATED** November 10, 2015.




THOMAS O. RICE
United States District Judge